from the Act; first, that a solicitor cannot sue for his costs without the leave of the court, and second, that where a liability to pay costs is established, the quantum of such costs can be regulated by taxation.

I have not had the benefit of arguments by counsel on the implications of these provisions on the present case. However, they do not appear to make any provision for a situation where the solicitor has discharged himself. If he does so for just cause and there is an order permitting him to withdraw under O 64 r 5, it seems to me that the court can give directions for taxation of his costs for work done. (See s 120(2) of the Act.) But if he withdraws unilaterally without justification, it must follow from first principles that quantum meruit has no application.

Finally it has to be observed that a very substantial part of Goh's bills relates to work done *not* by her but by Lee. I have not had any helpful assistance from counsel on the point, but it seems to me that a solicitor's lien in relation to client's files is a possessory right. Under it, the solicitor is entitled to detain the papers until his bill is paid. That is all. (See 44 *Halsbury's Laws of England* (4th Ed) para 229.) In the present case, when Goh rendered her bills on 29 January 1988, each bill stipulated that all cheques are to be crossed 'account payee only' and payable to Goh & Associates. In other words, even though Irene Goh specifically disclaimed that she was acting as the agent of Lee & Cheah, she was asking for moneys to be paid to her which could only be claimed by Lee & Cheah. There was no question of any assignment in this case or a novation whereby the liabilities, if any, of Chang, his wife and the company to Lee for costs were automatically transferred to Goh. Her bills were therefore wholly misconceived.

It follows from all this that Goh's claim for costs and disbursements either for herself, or on behalf of Lee & Cheah (who were no longer in existence in January 1988), must fail in toto. I do therefore now declare that the plaintiff is under no legal liability to pay any of the costs claimed by Goh & Associates in this action and make a further order in terms of prayers nos 4 and 7 of the plaintiff's originating summons herein. The plaintiffs' costs of and incidental to this originating summons shall be taxed and paid by the defendant to the plaintiff. Since this is a test action, it follows that there will be similar orders in the Originating Summons Nos 31-830 of 1988 and 31-842 of 1988.

Order accordingly.

Solicitors: *Ong & Ong*; *TH Lim & Co.*

Reported by *PS Ranjan*

Oversea-Chinese Banking Corp Ltd v Konsortium Utama Sdn Bhd

HIGH COURT (IPOH) - ORIGINATING MOTION NO 25-4-89
ABDUL MALEK J
30 JUNE 1989

Land Law - Caveat - Application by chargees for removal of caveat - Interest of caveator mere personal claim - Whether chargee aggrieved by lodgment of - National Land Code 1965, s 340(1) & (2)

The applicants had applied for an order that the private caveat lodged by the respondents in the Registry of Titles on the parcel of land in question be removed by the Registrar of Titles by cancellation. The applicants had registered themselves as chargees of the land in October 1983 while the private caveat was lodged in September 1987. The respondents were contractors for a company and had undertaken to perform construction works. They were not paid and an action was filed against the company. Judgment in default was obtained but was later set aside. Further, in 1986, the respondents had sold three sublots of the land to a third party. The respondents claim that only a sum of $60,000 of the sale price of $235,000 was paid. As a result of the judgment (which was subsequently set aside) and the alleged unpaid balance of the purchase price, the caveat was lodged. The respondents contended that the applicants, as chargees, were secured and the caveat would not in any way alter the applicants' position or prejudice their interests. Further, the respondents were willing to remove the caveat once they are paid the sums owed to them. The only question before the court was whether the applicants, as chargees, had been aggrieved by the caveat lodged.

Held, allowing the chargees' application:
Section 340(1) and (2) of the National Land Code 1965 is abundantly clear. The charge was registered prior to the sale and purchase agreement between the respondents and BLC. Being the chargee with an indefeasible title and in absence of any fraud, misrepresentation or forgery, the applicants had been aggrieved by the lodgment of the caveat by the respondent who have yet to obtain judgment against BLC. What the respondents had was a mere personal right that is yet to be converted into a judgment.

Cases referred to
1 *Eng Mee Yong & Ors* v *Letchumanan* [1979] 2 MLJ 212 (folld)
2 *Registrar of Titles, Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44 (folld)

Legislation referred to
National Land Code 1965 s 340(1), (2)

Arthur Yeong Chong Sen for the applicants.
Tan Kok Guan for the respondents.

Cur Adv Vult

Abdul Malek J: The applicants had, by way of notice of motion filed on 11 January 1989, on a certificate of urgency, applied for an order that the private caveat lodged by the above-named respondents in the Registry of Titles, Ipoh on the whole of the parcel or piece of land held under HS(D) Ka 3407/83 PT 46646 mukim Hulu Kinta, district of Kinta (hereinafter 'the said land') vide caveat

presentation no 3015/87 jilid 505 folio 23 be removed by the Registrar of Titles, Ipoh by the cancellation of the entry thereof on the register document of the aforesaid title, costs and other relief, on the grounds that as chargees of the said land by virtue of charge presentation no 27507/83 jilid 1570 folio 27 registered on 29 October 1983, their interests had been affected. A search report on 10 October 1988 had revealed that a private caveat had been lodged on the said land by the respondents on 1 September 1987.

The applicants had also exhibited a letter showing that three sublots, of the said land had been sold by the respondents to Yap Tim on 30 January 1986. The solicitors for the applicants had, by letter dated 26 October 1988, demanded that the respondents withdraw the said caveat to which the respondents had failed to comply.

In their affidavit-in-reply, the respondents averred that they were appointed as contractors for Ban Long Cheong Sdn Bhd (hereinafter 'BLC') on 28 October 1985 to undertake construction work on a housing project at Taman Pengkalan Baru, Ipoh. Subsequently, BLC had defaulted in payments for the work undertaken and had agreed to contra the debt to the respondents through the sale of ten units of houses. This promise was, however, not kept and the respondents had filed an action against BLC vide Ipoh High Court 22-67-88 and had obtained judgment in default on 18 April 1988. Hence the caveat.

As regards the sale to Yap Tim, the respondents allege that only $60,000 of the $235,000 had been paid for the three units of houses. The respondents contend that the applicants, as chargees, had been secured by the charge and that the presence of the caveat would not in any way alter the applicants' position or prejudice their interests in the said land. They also aver that they were willing to remove the caveat once Yap Tim or BLC paid up the $235,000 owed to them under the judgment in default obtained.

It is not disputed by both parties that the charge was registered on 29 October 1983 before the respondents lodged their private caveat on 1 September 1987. It is also a fact that the judgment in default obtained by the respondents against BLC on 18 April 1988 had been set aside on 5 May 1989 after arguments.

The only question is whether the applicants, as chargees, had been aggrieved by the private caveat lodged by the respondents in the said land under s 327 of the National Land Code 1965. In the celebrated case of *Eng Mee Yong & Ors* v *Letchumanan,*[1] the Privy Council had, in allowing the appeal, concluded that:

> In this case the onus was on the respondent, as caveator, to satisfy the court that on the evidence presented to it his claim to an interest in the property did raise a serious question to be tried and having done so, he must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the action by preventing the caveatee from disposing of his land to some third party.

Lord Diplock, in delivering the judgment of the Board, had stated that:

> The caveat under the Torrens system has often been likened to a statutory injunction of an interlocutory nature restraining the caveatee from dealing with the land pending the determination by the court of the caveator's claim to title to the land, in an ordinary action brought by the caveator against the caveatee for that purpose. Their Lordships accept this as an apt analogy with its corollary that caveats are available, in appropriate cases, for the interim protection of rights to title to land or registrable interest in land that are alleged by the caveator but not yet proved. Nevertheless their Lordships would point out that the issue of a caveat differs from the grant of an interlocutory injunction in that it is issued ex parte by the registrar acting in an administrative capacity without the intervention of the court and is wholly unsupported by any evidence at all. Unless there were some speedy procedure open to the registered proprietor to get the caveat set aside in cases where the caveator's claim is baseless or frivolous or vexatious, the Torrens system of land registration and conveyancing, so far from giving certainty to title to land in Malaya, would leave the registered proprietor in a more precarious position as respects his powers of disposition of his land than an unregistered proprietor under English law.

Three years earlier, four of the five Lords which heard the *Eng Mee Yong*[1] appeal had considered on appeal from the decision of the Federal Court which had held that the registrar's caveat was wrongly entered on the land whose registered proprietor owed the Federal Government overdue income tax. The Department of Inland Revenue, on hearing of the proposed sale of the land to the respondents, had requested the registrar to enter the caveat on the land. When the application for transfer of title to the respondents was presented, the registrar had accordingly rejected the documents because of the caveat. The High Court had dismissed the application to cancel the caveat and the Federal Court had allowed the appeal against that decision.

On appeal by the Registrar of Titles in *Registrar of Titles, Johore* v *Temenggong Securities Ltd,*[2] the Privy Council had held in the circumstances that:

(1) although Malaysian income tax became due and payable by the taxpayer to the Federation upon notice of assessment its legal nature was that of an unsecured civil debt. Until it was converted into a judgment by the recovery of judgment in an action, the unsecured civil debt gave rise to no legal rights in or over any property of the taxpayer nor to any remedies against the taxpayer's property. It was a mere personal claim against him and did not come within the meaning of 'interest' in s 310(1) of the National Land Code;

(2) the interests which the Registrar of Titles was empowered to protect under s 320(1)(b) were confined to interests in the land that were recognized by the Land Code as being either registrable or otherwise entitled to protection. An unsecured creditor of the proprietor of the land had no such interest in the land.

Section 340(1) and (2) of the National Land Code1965 is abundantly clear. The relevant provisions read:

> (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, *charge* or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible (The emphasis is mine.)
> (2) The title or interest of any such person or body shall not be indefeasible
>
> (a) in any case of fraud or misrepresentation to which the person or body, was a party or privy; or
> (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
> (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

In our case, not only are the applicants the chargee of the said land, but the charge had been registered prior to the sale and purchase agreement of the respondents with BLC by letters dated 29 January 1986 for three houses costing $235,000, 23 April 1986 for two houses costing $156,000, 23 April 1986 for two houses costing $156,000 and 24 April 1986 for five houses costing $390,000. These three letters confirmed that the said amounts had been fully settled by the respondents to BLC as a set-off for the $976,000 owed to the respondents by BLC for the construction of 42 single-storey terrace houses and 42 double-storey terrace houses. The fact that three of the units had been sold to Yap Tim who had settled the amount in full had been illustrated by the letter of the respondents to BLC dated 30 January 1986. Consequently, I fail to understand how the director of the respondents, by his affidavit filed on 3 May 1989, can aver that the respondents would only remove their caveat if BLC or Yap Tim paid up the $235,000 fully in the light of that letter. The same deponent had also admitted that his caveat could not get priority over the applicants' right as chargee.

Being the chargee with an indefeasible title and in the absence of any fraud, misrepresentation or forgery, the court was satisfied that the applicants had been aggrieved by the subsequent lodgment of the caveat by the respondents, who have yet to obtain judgment against BLC, and accordingly I allowed their application with costs.

Application allowed.

Solicitors: *CW Chew & Co; Tee, Tan & Partners.*

Reported by *Yap Shao Sin*

Overseas Union Bank Ltd lwn Chuah Ah Sai

MAHKAMAH TINGGI (PULAU PINANG) - SAMAN PERMULAAN NO 24(31)-287-88
MOHAMED DZAIDDIN H
20 JUN 1989

Undang-Undang Tanah - Permohonan melelong tanah - Notis tuntutan dalam Borang 16D - Beban pembuktian 'existence of cause to the contrary' - Pembuktian secara afidavit - Peluang menjelaskan hutang - Kanun Tanah Negara 1965, s 254 & 257(3)

Plaintif telah mengeluarkan surat tuntutan peguam kepada defendan pada 21 September 1987 meminta defendan menjelaskan baki hutangnya dalam masa tujuh hari, tetapi defendan telah gagal berbuat demikian. Pada 27 Februari 1988, plaintiff kemudiannya telah mengeluarkan notis tuntutan dalam Borang 16D di bawah s 254 Kanun Tanah Negara 1965 ('KTN'), meminta defendan membuat pemulihan ke atas kemungkirannya. Defendan juga telah gagal mematuhi kehendak notis tersebut. Plaintif kemudiannya membuat permohonan melelong tanah defendan di bawah s 257 KTN. Defendan telah membantah terhadap permohonan tersebut dengan alasan bahawa ia tidak diberi peluang untuk menjelaskan hutangnya mengikut kehendak s 254 KTN.

Diputuskan, membenarkan permohonan plaintif:
Beban membuktikan wujudnya 'cause to the contrary' di bawah s 257(3) KTN terletak pada defendan (sebagai pencagar) dan beban ini hendaklah disempurnakan secara afidavit dengan mencatitkan butir-butir yang menunjukkan merit. Bantahan defendan di dalam kes ini telah ditolak kerana ia tidak berjaya membuktikan bahawa ia mempunyai merit.

[The plaintiff in this case applied for the land charged to be sold by auction. The defendant claimed that he had not been given an opportunity to settle the debt. It was held that the burden of proving 'cause to the contrary' under s 257(3) of the National Land Code 1965 is on the defendant, and he has failed to discharge it as he has failed to show that his defence has any merit.]

[*Nota Penyunting*: Pihak defendan telah merayu kepada Mahkamah Agung menerusi Rayuan Sivil No 02-211-89.]

Kes rujukan
1 *Jacob* lwn *OCBC, Ipoh* [1974] 2 MLJ 161 (diikut)

Undang-undang rujukan
Kanun Tanah Negara 1965 s 254, 257

Hoe Kek Pin bagi pihak plaintif.
Tan Beng Hong bagi pihak defendan.

Mohamed Dzaiddin H: Ini adalah satu permohonan yang dibuat oleh plaintif bagi melelongkan tanah di bawah cagaran mengikut s 257 Kanun Tanah Negara 1965 ('KTN'). Permohonan dibenarkan pada 15 Mei 1989. Pihak defendan (pencagar) sekarang telah membuat rayuan kepada Mahkamah Agung.

Hanya satu isu sahaja telah diketengahkan oleh pihak defendan sewaktu membantah permohonan ini. Isu terse-